

Local Departments of Social Services

OFFICE OF INTERDEPARTMENTAL REGULATION

PROCEDURES FOR CONDUCTING BACKGROUND INVESTIGATIONS REQUESTED BY CHILD-PLACING AGENCIES (CPA) AS REQUIRED BY § 63.2-901.1 OF THE CODE OF VIRGINIA ON FOSTER AND ADOPTIVE PARENTS AND ADULT HOUSEHOLD MEMBERS

April 1, 2007

I. BACKGROUND INVESTIGATION UNIT

A. Hours of Operation:

The Office of Interdepartmental Regulation operates the Background Investigation Unit (BIU) which is staffed five business days per week from 8:30 a.m. to 4:00 p.m. Voice mail messages will receive a return call.

B. Point of Contact:

Angela Pearson, Legal Assistant
Email: angela.pearson@dss.virginia.gov
Telephone: (804) 726 – 7099
Or
Marilyn Suber, Legal Assistant
Email: marilyn.suber@dss.virginia.gov
Telephone: (804) 726 – 7092

FAX: (804) 726 – 7095

C. Emergency Point of Contact:

Charlene Vincent, Coordinator
Telephone: (804) 726 – 7097
FAX: (804) 726 – 7095

D. Mailing Address:

Office of Interdepartmental Regulation
Background Investigation Unit
7 North Eighth Street, 3rd Floor
Richmond, VA 23219

NOTE: Do not address mail to the Treasurer of Virginia.

II. CPA POINT OF CONTACT

Each CPA must designate one criminal background investigation contact person. All correspondence and questions from the BIU will be directed to this contact. In order to keep contact lists and mailing labels current, any changes in the designated point of contact should be reported to the BIU.

III. ORDERING FINGERPRINT CARDS AND OTHER FORMS

Fingerprint cards and related forms should be requested through the BIU.

IV. FORMS TO BE SUBMITTED AND FEES REQUIRED

A. Background Investigation: Each background investigation packet is to be forwarded to the BIU and include the following:

- Request for Criminal Background Investigation form
- One fingerprint card
 - Paperclip all information together, do not staple
 - Do not fold fingerprint cards
- Business check, cashier check or money order, placed on top of the investigation requests, for the appropriate fee based on the following breakdown:

Agency	LDSS
FBI	\$24
State Police	13
BIU	0
Total Fee Due For Each Background Investigation	\$37

Checks or money orders should be made payable to the Treasurer of Virginia. Personal checks will not be accepted. If an incorrect fee is submitted, the entire package will be returned or the CPA will be contacted to obtain permission to retain any excess funds. The BIU does not have a system to "credit" accounts.

V. IMPORTANT INFORMATION REGARDING FORMS

A. Authority for Release of Information:

Courts, law enforcement agencies, and military departments may require this form before releasing to the BIU information on missing dispositions and/or clarifying information regarding an arrest. Some agencies require the release form to be notarized and other agencies require that their own release form

be utilized. For those reasons, **do not** complete this form for each applicant unless a request is made by the BIU.

Note: An applicant's signature on the fingerprint card gives the authority to conduct a criminal background check.

B. Request for Criminal Background Investigation Form:

This form must be filled out completely and legibly or it will be returned. The form should be signed by the CPA's point of contact prior to submission to the BIU. **NOTE: An original signature is required on each form.**

C. Fingerprint Cards:

- Use only the fingerprint cards supplied by the BIU. Fingerprint cards from another agency cannot be used because each agency has its own identification number imprinted on the card and all results are returned to the agency identified on the card.
- Only one fingerprint card is to be submitted to the BIU to obtain Virginia and national criminal history checks. Fingerprint cards should be filled out completely and legibly or they will be returned.
- **It is mandatory that the CPA name, address, and identification number, as well as, the reason for being fingerprinted be typed on the card, typed on a label and adhered to the card, or imprinted by computer on the card.** The files for imprinting this information can be furnished via email if requested from the BIU.
- One of the following entries should be shown in the reason for being fingerprinted section:
 - **Foster Parent – VA Code § 63.2-901.1**
 - **Adoptive Parent – VA Code § 63.2-901.1**
 - **Adult Household Member – VA Code § 63.2-901.1**
 - **Birth Parent – VA Code § 63.2-901.1**

NOTE: No other reason or comments should be shown in this section.

- Applicant's name and personal identifying information may be handwritten, but only if block-style printing is used. The full name of the person should be shown at the top of each fingerprint card. If the person does not have a middle name, enter "(NMN)" in that area. If the person has only an initial instead of a first or middle name, enter the initial followed by "(IO)" in that area. Include the parentheses in both cases.

- The applicant's prints should be affixed to the fingerprint card. Prints may be taken by any local law enforcement agency [§ 19.2-392 of the *Code of Virginia* sets a maximum fee of \$10 for police authorities to provide this service] or a CPA employee or contractor who has received the necessary training and is qualified to take prints. The individual taking prints must verify the identity of the applicant. An official identification card bearing the applicant's picture can be used as verification. A valid driver's license is preferred.
- If an amputation or deformity makes it impossible to print a finger, it is recommended by the FBI that one of the following handwritten notations be made in the individual finger block:
 - Amp (Use this abbreviation if amputated)
 - Tip-Amp (Use this abbreviation if tip is amputated)
 - Missing at Birth
 - Cut-Off
 - Shot-Off
 - Deformed
 - Missing

If some physical condition makes it impossible to obtain perfect impressions, submit the best that can be obtained with a memo stapled to the card explaining the circumstances.

- A CPA is encouraged to take the steps necessary to ensure the individual taking prints is qualified to do so. All prints must be taken in proper order and be legible, fully rolled and classifiable. All data called for is essential. When a fingerprint card contains any accidental or additional markings or overlapping fingerprints, the scanning equipment will attempt to read the markings as fingerprint minutiae. The State Police recommends that a new card be completed. Due to the scanning process, print-over tabs should not be used and reprints may not be done on the reverse side of the card. Smudged or other unacceptable prints cannot be processed and will be returned to the CPA.
- All aliases must be listed on the fingerprint card. This includes maiden name, former married name, other previous names used, etc. If an applicant has a change of name during the background investigation process, any subsequent fingerprint cards should show the name **initially used** to avoid confusion between a name entered in the database and a name used by the State Police or FBI for billing purposes. When there has been a recent name change, the current name should be shown in the **aliases section** of the fingerprint cards.

- Citizenship entries of fingerprint cards must indicate the country of citizenship such as "US." **Do not enter yes or no.** It is not necessary to list alien registration numbers on any paperwork submitted to the BIU. NOTE: Individuals with "Green Cards" are not U.S. citizens, but have been granted permanent U.S. residency.
- Staples, labels, or markings of any kind cannot appear in the "LEAVE BLANK" areas of fingerprint cards. Do not fold the fingerprint cards. Failure to follow these procedures will result in processing delays according to the FBI.
- The race categories provided by the FBI **must** be utilized:

<u>Race</u>	<u>Code</u>
American Indian or Alaskan Native	I
Asian or Pacific Islander	A
Black	B
White	W

If race is Hispanic, other, or any other category not listed, then it should be entered with the race code most closely representing the applicant.

- **Miscellaneous Number section of fingerprint cards should be left blank.** The BIU enters its billing number in this section prior to the cards being sent to the State Police.

VI. PROCESSING OF BACKGROUND INVESTIGATIONS BY THE BIU

Background investigation packets are reviewed for completeness by the BIU's Legal Assistant. If complete, the fingerprint cards are scanned and forwarded to the State Police for processing and fees are deposited to pay State Police invoices. Incomplete background investigation packets may be returned to the CPA for completion unless resolution can be achieved via telephone or a minor correction can be made by the Legal Assistant.

VII. FINGERPRINT PROCESSING BY STATE POLICE AND FBI

The State Police processes one scanned fingerprint card for investigation through Virginia's Central Criminal Records Exchange (CCRE). The State Police then forward the scanned fingerprint card to the FBI for conducting an investigation through the National Crime Information Center (NCIC).

VIII. REJECTED FINGERPRINT CARDS

If a fingerprint card is rejected by the State Police or FBI, a different person should

attempt to obtain good prints. Local authorities and the State Police have scanning equipment to take prints which may increase the quality for a re-submission.

Reprints must be submitted within two weeks after receiving the rejection notification in order to complete the background investigation process and be in compliance with state law. If an applicant is no longer under consideration by the CPA, it is mandatory that the BIU be notified in order to close the case.

A check or money order for the appropriate fee must accompany the re-submission of a fingerprint card. The fees are based on the following breakdown:

Agency	Licensed CPA
FBI (1 st Re-submission)	\$ 0
FBI (Covers 2 nd & 3 rd Re-submission)	24
State Police	0
Processing Fee	0

Once the State Police, FBI, or both rejects four submissions on the same applicant, the BIU will send a letter indicating the case has been closed. A screening results letter will not be generated. If the applicant would like to try again in the future, an initial request must be submitted with the appropriate initial fees in order to create a new case.

IX. PROCESSING OF FINGERPRINT RESULTS BY THE BIU

The BIU will process the investigation results and the CPA will receive one of the following notifications:

- **“Eligible”** which means the applicant
 - Does not have a criminal record; or
 - Has not been convicted of any crime listed in the state law; or
 - Does not have any charges pending for any crime listed in the state law; or
 - Has a barrier crime conviction listed in § 63.2-1719 and meets the criteria to be approved based on the exceptions listed in the *Code of Virginia*.
- **“Not eligible”** which means the applicant
 - Has been convicted of a barrier crime listed in § 63.2-1719; or
 - Is the subject of pending charges for a barrier crime listed in § 63.2-1719.
- **“Unable to determine”** which means the applicant
 - Was, at some time, either **charged or arrested** with a crime listed in the state law and the BIU was unable to obtain a disposition or the BIU was unable to determine the nature of the charge or arrest. The BIU researches through all available state

and local record-keeping systems to determine whether the applicant was convicted of the crime. However, adequate information to make a determination may not be available when:

- The disposition has not been reported by the court to the State Police/FBI; or
 - The record has been purged or destroyed by the court; or
 - The BIU is unable to comply with the court's requirements for researching its records and releasing the disposition; or
 - The BIU was unable to determine if a listed arrest/conviction is a barrier offense because of lack of information shown on the arrest history and inability to obtain clarifying information from courts and law enforcement agencies.
- **“Administratively Closed Case”** which means the applicant
 - Received four rejections by the State Police, FBI or both; or
 - Is no longer under consideration by the CPA/process discontinued; or
 - Case has been in-active for 30 days.

X. CHALLENGING BACKGROUND RESULTS

A. FBI:

If an individual is denied approval because of information appearing on his FBI record **and** the individual wishes to challenge the information contained in the record, the CPA is required by state and federal laws to provide the individual with a copy of the challenge procedures. Copies of the challenge related letters may also be provided. The request for a copy of the FBI identification record should be mailed by the individual via the U.S. mail directly to the FBI, Criminal Justice Information Services Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26036. The letter requesting an identification record should include a (i) brief reason for the request; (ii) a money order or certified bank check in the amount of \$18, made payable to the Treasury of the United States; (iii) a set of rolled-inked fingerprint impressions placed upon fingerprint cards commonly utilized for applicant or law enforcement purposes by law enforcement agencies; and (iv) satisfactory proof of identity, which shall consist of name, date, and place of birth.

If, after reviewing the identification record, the individual believes it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency (court, law enforcement agency, etc.) that contributed the questioned information. If the applicant chooses, he may send his challenge directly to the FBI at the above address who will then forward it to the agency which submitted the data, requesting that the agency verify or correct the

challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI will make any changes necessary in accordance with the information supplied by that agency.

B. Virginia State Police:

If an individual needs to obtain a copy of his Virginia criminal record, contact the State Police using information listed below. In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the CCRE and he is not the person of the record, then the individual may initiate a challenge of a record. An individual should report this information to a local sheriff, police or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record.

The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address:

Manager
Central Criminal Records Exchange
Virginia Department of State Police
P. O. Box 27472
Richmond, VA 23261-7472
www.vsp.state.va.us
(804) 674 – 2000

Within five business days, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modification(s) taken, if applicable.

It is the policy of the CCRE to correct or otherwise modify a criminal record after receiving notification from the contributor of the record of the change to be initiated. Upon receipt of information that a record is in error, CCRE staff will initiate an audit of the record and coordinate corrections or modifications directly with the contributing agency. The time to complete this process varies depending on how expeditiously CCRE is officially advised by the contributor that a change to a record is appropriate. CCRE will not accept corrections or changes to a criminal record from sources other than the criminal justice agency (contributor) that submitted the record.

As a general rule, if the Virginia State Police fingerprint check resulted in a no record or the arrest history did not list any barrier convictions or pending charges, the arrest(s) that caused one of the above letters to be issued was reported by another state or possibly a federal agency (including the military). On rare occasions, an arrest is not listed in either the state police or FBI arrest

records, but is developed during the investigation through another source, i.e. court or police.

C. Changes to Records:

Reports to a CPA from the Office of Interdepartmental Regulation can be modified only after the individual challenges his record, it is corrected by the court or law enforcement agency, and the correction reported by the court/agency to the State Police or FBI. The CPA should then submit a request for a new background investigation to the BIU in order to obtain an accurate record.

If an applicant admits having a barrier conviction or pending charge, he is not entitled to proceed with the challenge procedure. In addition, § 63.2-901.1 of the *Code of Virginia* does not contain any provision for an appeal.

The BIU is not permitted to discuss arrest histories with an individual because of federal and state dissemination laws. For that reason, applicants should not be told to contact the BIU for more information.

XI. SAFEGUARDING AND DOCUMENTATION TO BE RETAINED BY CPA

State and federal laws prohibit secondary dissemination of criminal history records by CPA. A CPA is permitted to let an individual see his letter indicating the results of the State Police and FBI fingerprint checks, but is not permitted to furnish copies to anyone. Fingerprint cards can be shredded once the screening process is complete.

A CPA is responsible for safeguarding the background results. The following information is to be maintained in the applicant's file

- Copy of Request for Criminal Background Investigation Form, indicating date submitted to the BIU
- Sworn Disclosure Statement
- Letters transmitting results of the State Police and FBI fingerprint checks
- If necessary, the State Police record can be maintained in the record for documentation.

XII. PROHIBITED

A CPA is reminded that background investigations conducted under § 63.2-901.1 of the *Code of Virginia* can legally be conducted only on individuals requesting approval as a foster or adoptive parent, all adult household members and birth parents in the home of the individual.

XIII. OFFICE OF INTERDEPARTMENTAL REGULATION WEB SITE

Information regarding the Office of Interdepartmental Regulation and Background Investigation Unit may be found at <http://www.interdepartmentalregs.state.va.us> or <http://www.interdepartmentalregs.virginia.gov> . This site contains forms and answers to frequently asked questions.